

Message Text

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PAGE 01 USUN N 01207 01 OF 02 040332Z
ACTION IO-14

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TAGS: EGEN, UN, ECOSOC
SUBJECT: UN WORKING GROUP ON CODE OF CONDUCT RELATING TO
TRANSNATIONAL CORPORATIONS: FINAL WRAP-UP OF MARCH 20 -
31 SESSION.

1. SUMMARY: WHAT HAPPENED DURING JUST-COMPLETED TWO-
WEEKS MEETING OF INTERGOVERNMENTAL WORKING GROUP (IGWG)
ON A CODE OF CONDUCT RELATING TO TNCS IS CLEAR: AS A
RESULT OF HEAVY DEVELOPED COUNTRY COMMENTARY DURING
PREVIOUS SESSION IN FEBRUARY AND FIRST WEEK OF THIS
SESSION, SECRETARIAT OF GROUP PROVIDED A PAPER LISTING
COMMON ELEMENTS FOR DISCUSSION WHICH MOVED STRONGLY IN THE
DIRECTION OF DEVELOPED COUNTRY POSITIONS. THE G-77
REACTION -- AND THAT OF THE EASTERN BLOC COUNTRIES AS
WELL -- WAS SHARP AND NEGATIVE TOWARD MANY OF THE CONCEPTS
IN THE PAPER (ALTHOUGH NOT IN PRINCIPLE TOWARD THE PAPER
ITSELF), IN PARTICULAR THE PART OF THE PAPER (SECTION IV)
DEALING WITH RESPONSIBILITIES OF GOVERNMENTS. THIS LED
IN THE LAST FEW DAYS OF THE SESSION TO EXCHANGES WHICH
SET OUT SHARPLY THE DIFFERENCES IN APPROACH ON THE CODE,
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PAGE 02 USUN N 01207 01 OF 02 040332Z

AND INCLUDED REJECTION BY G-77 SPOKESMAN OF CIEC TEXTS
INTRODUCED IN COMMON ELEMENTS TEXT. WHETHER THIS MEANS
EITHER PROGRESS OR RETRENCHMENT IN EFFORTS TO ACHIEVE A
CODE IS AN OPEN QUESTION, HOWEVER, AND SOME OF THE
POSSIBILITIES ARE DISCUSSED BELOW. END SUMMARY.

2. AT THE END OF THE FIRST WEEK OF THE TWO-WEEK SESSION

JUST COMPLETED, IGWG COMPLETED ITS DISCUSSION IN DETAIL OF ORIGINAL CHAIRMAN'S (NIKLASSON-SWEDEN) ANNOTATED OUTLINE. LED BY U.S., DEVELOPED COUNTRIES CONCENTRATED ON FLESHING OUT BARE AND LARGELY NEUTRAL BONES OF SECTION IV OF THIS OUTLINE, WHICH DEALT WITH RESPONSIBILITIES OF GOVERNMENTS TO UNDERTAKE MEASURES TO IMPROVE INVESTMENT CLIMATE. PAPER ISSUED BY SECRETARIAT ON MARCH 25 REFLECTED THIS DISCUSSION AND -- AS U.S. DELEGATE HAD SUGGESTED EARLY IN DEBATE - MADE SECTION IV PARALLEL WITH SECTION III (RESPONSIBILITIES OF TNCS) BY PHRASING CONCEPTS IN NORMATIVE LANGUAGE. INTRODUCTION OF PAPER CLEARLY STATES THAT PAPER DOES NOT AFFECT POSITIONS OF GOVERNMENTS AND IS FOR DISCUSSION PURPOSES ONLY. (THIS POINT WAS ABSOLUTELY NECESSARY NOT JUST FOR MANY DEVELOPING COUNTRIES, WHICH OBJECTED IN PRINCIPLE TO LISTING OF GOVERNMENT RESPONSIBILITIES, BUT ALSO U.S. AND OTHER DELEGATIONS AS WELL, SINCE MANY "COMMON ELEMENTS" LISTED IN PAPER ARE PHRASED IN A MANNER WHICH WE COULD NOT ACCEPT, AND WE AND MOST OTHER DEVELOPED COUNTRIES IN ANY CASE HAVE MADE IT CLEAR WE CANNOT IN PRINCIPLE AGREE TO FORMAL DRAFTING OF ACTUAL CODE ARTICLES AT THIS STAGE).

3. DEBATE WHICH RESULTED ON SECRETARIAT PAPER IN SECOND WEEK OF MEETING CLEARLY SHOWED WIDE DIFFERENCES IN APPROACH. EASTERN BLOC ISSUED AT OUTSET WRITTEN STATEMENT OF VIEWS WHICH CHALLENGED MANY OF BASIC IDEAS LIMITED OFFICIAL USE

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PAGE 03 USUN N 01207 01 OF 02 040332Z

BEHIND LISTING OF GOVERNMENT RESPONSIBILITIES OF CODE, BASING THEIR CASE ON INALIENABLE SOVEREIGNTY OF INDIVIDUAL STATES. G-77 SPOKESMAN (JAMAICA) TOOK SLIGHTLY SOFTER APPROACH, NEVER INDICATING HIS GROUP WOULD NOT ACCEPT REFERENCES TO TREATMENT OF TNCS BY GOVERNMENTS, ALTHOUGH IT HAD DIFFICULTIES WITH FOCUS OF SECTION. HE INDICATED AT EACH ITEM UNDER DISCUSSION THAT TREATMENT HAD TO BE ACHIEVED IN LOCAL LAW (WHICH COULD INCLUDE REFERENCES TO BILATERAL TREATIES AND EVEN CONTRACTS) - AND PROPOSED DELETION OF ALL POSITIVE ELEMENTS IN TEXT FROM OUR POINT OF VIEW, INCLUDING AGREED CIEC ITEMS. IN DISCUSSION ON SECTION III WHERE RESPONSIBILITIES OF TNCS ON A WIDE RANGE OF SUBJECT IS SET OUT -- ADHERENCE TO ECONOMIC DEVELOPMENT GOALS, ABSTENTION FROM POLITICAL INTERFERENCE, ILLICIT PAYMENTS, ECONOMIC ISSUES SUCH AS BALANCE OF PAYMENTS, RESTRICTIVE BUSINESS PRACTICES, LABOR AND EMPLOYMENT, ETC. THRUST OF G-77 POSITION WAS TO TIGHTEN UP SECTIONS TO MAKE THEM AS BINDING AS POSSIBLE ON TNCS, WHILE U.S. AND SOME OTHER DEVELOPED COUNTRY DELEGATIONS EMPHASIZED NEED FOR FLEXIBILITY.

4. CHAIRMAN NIKLASSON'S ROLE HAS BEEN CRITICAL THROUGHOUT THE DISCUSSIONS, SUMMARIZING DISCUSSION ON MOST POINTS IN A MANNER WHICH TENDS TO REAFFIRM MOST OF SUBSTANTIVE COMMENTS MADE BY OECD DELEGATIONS, IN PARTICULAR ABOUT NEED FOR FLESHED-OUT, NORMATIVE SECTION ON TREATMENT OF TNCs BY GOVERNMENTS. IF MOST OF CURRENT TEXT SURVIVES, IT WILL BE IN LARGE PART DUE TO HIS HANDLING OF THE DISCUSSION.

5. IGWG HAS NOW COMPLETED DISCUSSION OF ONLY ABOUT ONE-THIRD OF NEW SECRETARIAT TEXT. MOST OF NEXT SESSION OF GROUP (WHICH MAY BE SOMETIME LATE THIS SUMMER, ALTHOUGH THERE ARE SERIOUS SCHEDULING PROBLEMS) WILL BE DEVOTED

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PAGE 01 USUN N 01207 02 OF 02 040319Z
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TO REMAINDER OF TEXT. NIKLASSON ALSO MENTIONED IN CLOSING SESSION MARCH 31 THAT HE HOPES GROUP WILL BE ABLE TO DISCUSS OTHER MAJOR ISSUES OUTSIDE SECTIONS III AND IV, E.G. DEFINITION OF A TNC AND LEGAL STATUS OF CODE AT THAT SESSION, BUT NOT REPEAT NOR IMPLEMENTATION MECHANISMS. SOUTHERN AFRICAN ISSUE NOW ALSO IN AGENDA.

6. NIKLASSON ALSO SAID IN HIS CLOSING REMARKS THAT GROUP HAD MADE GREAT PROGRESS IN ITS DISCUSSIONS AND THAT HE WAS HIGHLY OPTIMISTIC ABOUT FURTHER PROGRESS IN FUTURE SESSIONS. IN VIEW OF DEVELOPMENTS DESCRIBED ABOVE, THIS ASSERTION IS HIGHLY QUESTIONABLE. ON THE ONE HAND, FROM U.S. POINT OF VIEW SOME PROGRESS HAS BEEN MADE BY SECRETARIAT PAPER FIRMLY ANCHORING SECTION IV IN TEXT

AND EXPRESSING ITS POINTS IN NORMATIVE LANGUAGE. IF PERIOD BETWEEN NOW AND NEXT SESSION PROVIDES BREATHING SPACE IN WHICH DEVELOPING COUNTRIES CAN LEARN TO LIVE WITH SECTION IV CONCEPTS AND ALSO FURTHER IMPELS THEM IN THE DIRECTION OF ACCEPTING A CODE WHICH IS LESS THAN MANDATORY, THIS COULD BE GOOD FOR FUTURE PROGRESS ON CODE.

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PAGE 02 USUN N 01207 02 OF 02 040319Z

7. IT IS CLEAR TO MOST OBSERVERS AT CURRENT IGWG SESSION THAT DEVELOPING COUNTRY GROUP IS IN FACT SPLIT ON THESE ISSUES, BUT HAS CHOSEN FOR REASONS OF GROUP SOLIDARITY, TO ADOPT A RELATIVELY HARD LINE AT THIS STAGE. G-77 REPRESENTATION FROM CAPITALS REMAINS SPARSE, WHICH IS NOT HELPFUL, AND THE POLITICAL FOCUS OF G-77 USMISSION REPS WAS EVIDENT FROM SOUTHERN AFRICAN DISPUTE. MORE CONSIDERED EVALUATION OF CODE ISSUES IN KEY G-77 CAPITALS MAY BE HELPFUL IN MODERATING THESE ATTITUDES IN THE INTERVAL.

8. IF INTERVAL BETWEEN NOW AND NEXT IGWG SESSION BREEDS INACTION AND LEADS ONLY TO REAFFIRMATION OF INSISTENCE ON IMMUTABLE AND OVERRIDING NATIONAL SOVEREIGNTY BY DEVELOPING COUNTRIES, AND IF EASTERN BLOC COUNTRIES CONTINUE TO PLAY OBSTRUCTIONIST ROLE IN THIS CONNECTION, THEN NEXT SESSION COULD REVERT TO FORM OF EARLIER NON-PRODUCTIVE, HIGHLY CONFRONTATIONAL U.N. DISCUSSIONS ON TNCS. IF THIS HAPPENS, THEN WE BELIEVE THAT LONG-RUN RESULT WILL BE DOWNPLAYING BY 77 OF ENTIRE CODE EXERCISE -- WHICH IN RECENT YEAR HAS NOT BEEN A HIGH PRIORITY ITEM IN ANY CASE -- AND ITS GRADUAL DISAPPEARANCE AS A SIGNIFICANT ISSUE IN NORTH-SOUTH RELATIONS. LEONARD

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